

## LEGISLATIVE BILL 766

Approved by the Governor April 7, 1988

Introduced by Barrett, 39, Speaker, for the Governor

AN ACT relating to environmental protection; to adopt the Wastewater Treatment Facilities Construction Assistance Act; to provide severability; and to declare an emergency.  
Be it enacted by the people of the State of Nebraska,

Section 1. This act shall be known and may be cited as the Wastewater Treatment Facilities Construction Assistance Act.

Sec. 2. The Legislature finds that the construction, rehabilitation, operation, and maintenance of modern and efficient sewer systems and wastewater treatment works are essential to protecting and improving the state's water quality, that protecting water quality is an issue of concern to all citizens of the state, that in addition to protecting and improving the state's water quality, adequate wastewater treatment works are essential to economic growth and development, that during the last several years the amount of federal grant money available to states and local governments for assistance in constructing and improving wastewater treatment works has sharply diminished and will likely continue to diminish, and that it is proper for the state to encourage local governments to undertake wastewater treatment projects through the establishment of a state mechanism to provide loans at the lowest reasonable rates.

The Legislature determines that it is in the public interest to establish a loan fund to make loans available from the state to municipalities to carry out the purposes of the Wastewater Treatment Facilities Construction Assistance Act.

Sec. 3. As used in the Wastewater Treatment Facilities Construction Assistance Act, unless the context otherwise requires:

(1) Clean Water Act shall mean Public Law 92-500, as amended by Public Law 98-396 and Public Law 100-4;

(2) Construction shall mean any of the following: Preliminary planning to determine the feasibility of wastewater treatment works; engineering, architectural, legal, fiscal, or economic investigations

or studies; surveys, designs, plans, working drawings, specifications, procedures, or other necessary preliminary actions; erection, building, acquisition, alteration, remodeling, improvement, or extension of wastewater treatment works; or the inspection or supervision of any of the foregoing items;

(3) Council shall mean the Environmental Control Council;

(4) Department shall mean the Department of Environmental Control;

(5) Fund shall mean the Wastewater Treatment Facilities Construction Loan Fund;

(6) Municipality shall mean any city, town, village, district, association, or other public body created by or pursuant to state law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes;

(7) Operate and maintain shall mean all necessary activities including the normal replacement of equipment or appurtenances to assure the dependable and economical function of a wastewater treatment works in accordance with its intended purpose; and

(8) Wastewater treatment works shall mean the structures, equipment, and processes required to collect, transport, and treat domestic or industrial wastes and to dispose of the effluent and sludges.

Sec. 4. The director may obligate and administer any federal grants to municipalities for construction of publicly owned wastewater treatment works pursuant to the Clean Water Act.

Sec. 5. There is hereby created in the state treasury a cash fund to be known as the Wastewater Treatment Facilities Construction Loan Fund. The department shall maintain the following separate accounts for four distinct activities: (1) An administration account; (2) a federal allocations account; (3) a state allocations account; and (4) an investment earnings account. The administration account, the federal allocations account, and the state allocations account shall comprise the water pollution control revolving fund required by Title VI, section 601 et seq., of the Clean Water Act.

The administration account shall consist of any funds available for administering construction loans pursuant to the Wastewater Treatment Facilities Construction Assistance Act or section 603(d)(7) of the Clean Water Act. The director may pay the reasonable costs of administering loans and of other necessary activities.



The federal allocations account shall consist of federal capitalization grants pursuant to section 601 of the Clean Water Act and repayments of principal and interest on loans. The director may make loans from the federal allocations account pursuant to the Wastewater Treatment Facilities Construction Assistance Act.

The state allocations account shall consist of state appropriations necessary to qualify for federal capitalization grants, repayments of principal and interest on loans, and other money designated for the fund. The director may make loans from the state allocations account pursuant to the Wastewater Treatment Facilities Construction Assistance Act.

The investment earnings account shall consist of investment earnings on any invested balance in the fund. The Legislature may transfer funds from the investment earnings account to the state allocations account.

The state investment officer shall invest any money in the fund available for investment pursuant to sections 72-1237 to 72-1269. Investment earnings shall be credited to the investment earnings account of the fund.

Sec. 6. The council shall have the following powers and duties:

(1) The power to adopt and promulgate rules and regulations to govern the application procedure and requirements for making loans under the Wastewater Treatment Facilities Construction Assistance Act;

(2) The power to adopt a system for the ranking of wastewater treatment construction projects with known needs or for which loan applications have been received by the department. In establishing the system the council shall consider, among other things, the severity of pollution, public health, water quality impact, population, financial capability, and eligibility of the construction project for federal or state funds. This priority system shall be reviewed annually by the council;

(3) The power to adopt a system of establishing interest rates to be charged on loans. The system shall presume that the current market interest rate shall be charged unless a municipality demonstrates a serious financial hardship. The following factors shall be considered when making a determination of serious financial hardship: Income level of residents; amount of debt and debt service requirements; and level of user fees in both absolute terms and relative to income of residents;

(4) The power to create an administrative fee to be assessed on a loan for the purpose of administering the Wastewater Treatment Facilities Construction Assistance Act. Such fee shall be based on the availability of federal funding for such purpose and the projected administrative needs for carrying out the purposes of the act; and

(5) The power to determine the maximum amount of any one loan or combination of loans for any single municipality.

Sec. 7. The department shall have the following powers and duties:

(1) The power to establish a program to make loans to municipalities, individually or jointly, for construction or modification of publicly owned wastewater treatment works in accordance with the Wastewater Treatment Facilities Construction Assistance Act and the rules and regulations of the council adopted and promulgated pursuant to such act;

(2) The duty to prepare an annual report for the Governor and the Legislature;

(3) The duty to establish fiscal controls and accounting procedures sufficient to assure proper accounting during appropriate accounting periods, including the following:

(a) Accounting for payments received by the fund;

(b) Accounting for disbursements made by the fund; and

(c) Balancing the fund at the beginning and end of the accounting period;

(4) The duty to establish financial capability requirements that assure sufficient revenue to operate and maintain a facility for its useful life and to repay the loan for such facility;

(5) The power to determine the rate of interest to be charged on a loan in accordance with the rules and regulations adopted and promulgated by the council;

(6) The power to enter into required agreements with the United States Environmental Protection Agency pursuant to section 602 of the Clean Water Act; and

(7) Such other powers as may be necessary and appropriate for the exercise of the duties created under the Wastewater Treatment Facilities Construction Assistance Act.

Sec. 8. Categories of loan eligibility shall include: Secondary treatment and appurtenances;



infiltration and inflow correction; major sewer system rehabilitation; new collector sewers and appurtenances; new interceptors and appurtenances; and correction of combined sewer overflows. Loans shall be made only for eligible items within such categories. For loans made entirely from state funds, eligible items shall include, but not be limited to, the costs of engineering services and contracted construction. Eligible items shall not include the costs of water rights, land, easements, and rights-of-way, legal costs, fiscal agent's fees, operation and maintenance costs, and municipal administrative costs. For loans made in whole or in part from federal funds, eligible items shall be those identified pursuant to the Clean Water Act.

Sec. 9. Loans made under the Wastewater Treatment Facilities Construction Assistance Act shall be made only to municipalities that:

- (1) Meet the requirements of financial capability set by the department;
- (2) Develop and implement a long-term wastewater treatment works management plan for the term of the loan, including yearly renewals;
- (3) Pledge sufficient revenue sources for the repayment of the loan if such revenue may by law be pledged for that purpose;
- (4) Provide capacity for twenty years domestic and industrial growth or reasonable capacity as determined by the department;
- (5) Agree to operate and maintain the wastewater treatment works so that it will function properly over the structural and material design life which shall not be less than twenty years;
- (6) Agree to maintain financial records according to generally accepted government accounting standards and to conduct an audit of the project's financial records;
- (7) Provide a written assurance, signed by an attorney, that the municipality has proper title, easements, and rights-of-way to the property on or through which the wastewater treatment works is to be constructed or extended;
- (8) Require the contractor of the construction project to post separate performance and payment bonds or other security approved by the department in the amount of the bid;
- (9) Provide a certified operator pursuant to voluntary or mandatory certification programs, whichever is in effect;
- (10) Provide a written notice of completion

and start of operation of the facility; and

(11) Employ a registered professional engineer to provide and be responsible for engineering services on the project such as an engineering report, construction contract documents, observation of construction, and startup services.

Sec. 10. Loan terms shall include, but not be limited to, the following:

(1) The term of the loan shall not exceed twenty years;

(2) The interest rate shall be at or below market interest rates;

(3) The annual principal and interest payment shall commence not later than one year after completion of any project and all loans shall be fully amortized not later than twenty years after the date of completion of the project; and

(4) The loan recipient shall immediately repay any loan when a grant has been received which covers costs provided for by such loan.

Sec. 11. Loans shall be granted for projects in accordance with the procedures established through the state's continuing planning process pursuant to sections 205(j), 208, 303(e), and 320 of the Clean Water Act and for projects listed on the state's priority list under section 216 of the Clean Water Act.

Sec. 12. If a municipality fails to pay any charge imposed pursuant to a loan repayment within sixty days of the date due, such charge shall be deducted from the amount of aid to municipalities to which the municipality is entitled under sections 77-27,136 to 77-27,137.01. Such amount shall be paid directly to the Wastewater Treatment Facilities Construction Loan Fund as appropriate.

Sec. 13. If any section in this act or any part of any section shall be declared invalid or unconstitutional, such declaration shall not affect the validity or constitutionality of the remaining portions thereof.

Sec. 14. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.